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October 6, 2017

Jeff Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Office of the General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: Matter Under Review ("MUR") 7272

Dear Mr. Jordan:

This letter is on behalf of Mercury Public Affairs LLC (which was referred to in the complaint in the above-referenced matter ("Complaint") as Mercury, LLC and Mercury/Clark and Weinstock, and which shall collectively be referred to herein as "Mercury"), as well as several individuals associated with Mercury: Edward Kutler,¹ Gregory Lankler, Michael McSherry, Deirdre Stach, and John V. ("Vin") Weber (collectively, the "Mercury Respondents") in response to the Complaint filed by J. Whitfield Larrabee, *et al.* ("Complainants"), alleging that the Mercury Respondents violated the Federal Election Campaign Act ("FECA" or "the Act") by somehow funneling funds from their clients to certain federal candidates, in contravention of the FECA's prohibition on contributions in the name of another. As will be demonstrated herein, the allegation that the Mercury Respondents violated FECA is based on nothing more than speculation and should be roundly rejected by the Federal Election Commission.

I. Introduction

This Complaint completely lacks any factual foundation, is based on mere conjecture, and reflects a distorted view of the American political system. It is brought by, among others, a

¹ Edward Kutler's counsel in this matter is David Schertler of Schertler & Onorato, LLP, who joins in this response.

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complainant, Mr. Larrabee, who appears to have a penchant for filing complaints stemming from news stories tied in any way to President Trump or his associates (in this case, Paul Manafort).

The Complaint relays facts concerning the manner in which government relations professionals interact with their clients and with elected officials, and then attempts to equate the normal process of political participation and the right to petition the government—protected by the First Amendment—with an illegal and nefarious purpose. The Complaint does not provide any substantiated evidence that campaign contributions made by the individual Mercury Respondents were reimbursed by their client or by any other source. Rather, the Complaint lays out a series of bland facts: that the European Centre for a Modern Ukraine (“ECFMU”) reportedly retained Mercury to conduct public relations and lobbying activities on its behalf; that payments reportedly were made to Mercury for such services; that Mercury apparently lobbied certain members of Congress; and that certain individual Mercury Respondents reportedly made contributions to those members of Congress. It then oddly claims that this series of facts is “only consistent with [the Mercury Respondents] making the contributions on behalf of the ECFMU” and that the Mercury Respondents, among others, “were reimbursed for their contributions by the ECFMU ... through subsequent payments for fees and reimbursed expenses.” *Complaint at* ¶¶ 59-60.

The Complaint attempts to paper over the obvious holes in its argument by citing information from the FEC and Mercury’s Foreign Agents Registration Act filings. This information, though, is of no help to the Complainants in closing those holes. It does nothing more than support the facts noted above: that the individual Mercury Respondents made certain campaign contributions, that Mercury reported representing ECFMU, and Mercury was compensated for its fees and expenses, as is the norm for any professional government relations relationship. Complainant seems to suggest a presumption of guilt for the entire government relations industry when, in fact, it is very common for persons working at such firms to periodically make contributions to campaign committees of elected officials. Our federal political system is structured so that government relations professionals are fully permitted to make political contributions—even to committees of those who might be of some interest to their employer or its clients—and a presumption of corruption should not be attached to these “most fundamental First Amendment activities.” *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (*quoting* *Mills v. Alabama*, 384 U.S. 214, 218 (1966)).

In addition to the obvious logical and factual inadequacies in the Complaint, it is brought by someone with an apparent bias against Donald Trump and individuals in his inner circle (like Mr. Manafort). Complainant, J. Whitfield Larrabee, is a Boston-based plaintiff’s attorney with no experience in election or campaign law. Nevertheless, as a result of the candidacy of President Trump, Mr. Larrabee established what he has named the “Presidential Law Project”.² According to Mr. Larrabee’s website, “the Presidential Law Project acts to ensure that the

² <http://www.larrabeeelaw.com/presidential-law-project/>

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President of the United States and executive officials comply with the Constitution and laws.”³ In conjunction with the “Presidential Law Project”, Mr. Larrabee has filed numerous complaints in a variety of fora against President Trump (including during the pendency of his presidential candidacy) and those closely connected with Mr. Trump, like Mr. Manafort.

These include complaints against President Trump and Florida Attorney General Pam Bondi, filed with the U.S. Attorneys for the Southern District of New York and the Northern District of Florida⁴ and with the New York State Department of Law Charities Bureau,⁵ and against AG Bondi with the Florida Division of Elections, the Florida Ethics Commission, and the Florida Bar.⁶ Mr. Larrabee also has filed complaints against U.S. Attorney General Jeff Sessions with the U.S. Department of Justice accusing AG Sessions of perjury and attempting to cover up that perjury⁷ and with the Alabama Bar Association alleging violations of the Alabama Bar’s rules of professional conduct and seeking General Sessions’ disbarment.⁸ The Alabama and Florida Bar Associations are not the only ones to have received complaints from Mr. Larrabee. He also has filed a complaint with the Wisconsin Office of Lawyer Regulation, seeking the revocation of the law license of then-White House Chief of Staff Reince Priebus⁹ and with the Connecticut Statewide Grievance Committee seeking the same action against President Trump’s former campaign chairman, Mr. Manafort.¹⁰

Although most of those complaints are still making their way through the various agencies, no action was taken on the Florida bribery complaint against AG Bondi. According to the assistant state attorney tasked with reviewing it, the complaint was “insufficient on its face to conduct a criminal investigation,”¹¹ the same circumstance we have here. We strongly urge the Commission to consider the credibility of a complainant’s allegations when there is an apparent bias involved and a willingness to resort to pure conjecture.

³ *Id.*

⁴ <http://www.politico.com/states/f/?id=00000155-9d95-d8e1-adf7-bddda28b0000>

⁵ <http://www.politicususa.com/wp-content/uploads/2017/06/EMBEZZLEMENT-AND-FRAUD-COMPLAINT-V-DONALD-TRUMP-AND-ERIC-TRUMP-FORM.pdf>

⁶ <http://www.miamiherald.com/news/pam-bondi-hit-with-ethics-complaints-as-calls-for-investigation-into-trump-donation-grow-8514765>

⁷ https://www.washingtonpost.com/news/post-nation/wp/2017/03/27/23-people-ask-the-justice-department-to-launch-a-criminal-inquiry-into-its-chief-jeff-sessions/?utm_term=.348fea6de1cb

⁸ http://www.al.com/news/birmingham/index.ssf/2017/03/lawyer_files_alabama_bar_assoc.html

⁹ <https://lawnewz.com/high-profile/bar-complaint-accuses-reince-priebus-of-corruptly-attempting-to-influence-fbi-investigation/>

¹⁰ <http://www.courant.com/politics/hc-paul-manafort-law-license-20170418-story.html>

¹¹ <http://floridapolitics.com/archives/235656-not-enough-evidence-found-bondi-trump-bribery-complaint>

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II. Analysis

A. The Applicable Legal Standard Raises a High Bar

Both Congress and the Commission have made it clear that the complaint process should be based on *some* factual predicate known to the complainant. Congress has mandated that the legal threshold built into the enforcement process requires that there be “reason to believe that a person has committed ... a violation [of FECA].”¹² If that factual predicate is based solely on “information and belief,” rather than personal knowledge, the Commission has determined that the complainant should identify the source of the information on which that belief is based, in order to allow the Commission to judge the credibility of that source:

(b) A complaint shall comply with the following:

(1) It shall provide the full name and address of the complainant;
and

(2) The contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized.

(c) All statements made in a complaint are subject to the statutes governing perjury and to 18 U.S.C. 1001. *The complaint should differentiate between statements based upon personal knowledge and statements based upon information and belief.*

(d) The complaint should conform to the following provisions:

(1) It should clearly identify as a respondent each person or entity who is alleged to have committed a violation;

(2) *Statements which are not based upon personal knowledge should be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of such statements;*

(3) It should contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction; and

(4) It should be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant.¹³

The Commission has repeatedly and consistently stressed that complaints that allege only speculative violations of the FECA do not give the Commission “reason to believe” that violations of the Act have occurred.

¹² 11 U.S.C. § 30109(a)(2).

¹³ 11 C.F.R. §§ 111.4(b)-(d) (emphasis added).

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The Commission may find “reason to believe” only if a complaint sets forth specific facts, which, if proven true, would constitute a violation of the FECA. Complaints not based upon personal knowledge must identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented.

Unwarranted legal conclusions from asserted facts ... *or mere speculation* ... will not be accepted as true.¹⁴

In MUR 5467, the Commission accepted the Office of General Counsel’s recommendation to dismiss the complaint on the grounds that it “present[ed] nothing more than idle, unsupported speculation.”¹⁵ Notably, however, certain Commissioners issued a Concurring Statement of Reasons in order to “stress the importance of th[e] case as *a matter of Commission policy not to entertain speculative complaints*.”¹⁶ The concurring Commissioners went on to emphasize that “it is important that the Commission reject all speculative complaints, whatever the motivation behind them, in order to preserve the integrity of the enforcement process and to focus its limited resources on actual violations of the law.”¹⁷

Indeed, for decades the Commission has refused to find reason to believe that a violation of the Act has occurred where, as here, complaints lack evidence and contain mere speculation.¹⁸

¹⁴ MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.) Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 1-2 (emphasis added). This document and the others cited herein are available on the FEC’s website at: <http://eqs.fec.gov/eqs/searcheqs>.

¹⁵ MUR 5467 (Michael Moore), First General Counsel’s Report at 6.

¹⁶ *Id.* Concurring Statement of Reasons of Chairman Bradley A. Smith and Commissioner Michael E. Toner at 2 (emphasis added).

¹⁷ *Id.* at 3.

¹⁸ MUR 3534 (Bibleway Church of Atlas Road) Statement of Reasons of Chairman Scott E. Thomas, Vice Chairman Trevor Potter and Commissioners Lee Ann Elliott, Danny Lee McDonald, Joan D. Aikens and John W. McGarry at 2 (“lack of evidence indicating the literature was distributed on behalf of the Bibleway Church or at its expense”); MUR 4850 (Deloitte & Touche L.L.P.) Statement of Reasons of Chairman Darryl R. Wold and Commissioners David M. Mason and Scott E. Thomas at 1-2 (“lack of evidence in the complaint to support the allegation”; “complaint alleged in a conclusory fashion”; “mere conclusory accusation without any supporting evidence does not shift the burden of proof to respondents”); MUR 6002 (Freedom’s Watch, Inc.) Statement of Reasons Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at 6 (“A reason-to-believe finding by the Commission must be based on specific facts from reliable sources”); MURs 5977 and 6005 (American Leadership Project) Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at n.12 (“OGC overlays the wrong standard to its speculative theory – it is not enough for the Commission to believe that there is reason to investigate whether a violation occurred.”); MUR 6056 (Protect Colorado Jobs, Inc.) Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at 7 (“The complaint at issue here is rather threadbare.”); MUR 6296 (Kenneth R. Buck) Statement of Reasons Vice Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen at 1-2. (“if this complaint sufficed to find reason to believe coordination occurred ... it is hard to imagine any allegations, no matter how unsubstantiated, that would not

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The Complaint here is absolutely bereft of anything that would reach, let alone clear, the high bar of the FECA's "reason to believe" standard. It contains no facts indicating that the compensation to Mercury or Mercury's compensation to the individual Mercury Respondents was intended to reimburse contributions by the latter or was anything but reasonable payment for professional services. Indeed, certain current commissioners recently made it clear that they were "aware of *no past Commission matter* in which apparent compensation has been deemed to constitute a contribution in the name of another in the absence of any evidentiary link between that compensation and a contribution."¹⁹ Such evidentiary link is completely lacking here.

B. Respondents Expressly Deny Having Been Part of a Contribution Reimbursement Scheme

Although the Commission could and should dismiss the Complaint due to the lack of evidence provided, the individual Mercury Respondents wish to put on the record their declarations under penalty of perjury strongly denying that any reimbursement of their contributions occurred. At **Exhibit 1** are declarations from Ed Kutler, Gregory Lankler, Michael McSherry, Deirdre Stach, and Vin Weber confirming that they were not reimbursed for their political contributions.

Further, in support of the foregoing, the declarations demonstrate that these respondents have a long history of generous political giving to federal candidates and committees—totaling approximately \$338,050 from 2013-2016. Overall, it is absurd to allege nefarious conduct because \$10,250 in political contributions from a few Mercury employees (approximately 3% of their total contributions over a four-year period) happened to be given to campaign committees of federal officials whom the Complaint alleges Mercury met with on behalf of a client.²⁰ If that type of leap in logic were acceptable, then the FEC could expect to receive complaints alleging reimbursed contributions with respect to virtually every government relations professional in Washington.

As a last point, the declarations of Gregory Lankler and Deirdre Stach point out that they never even worked on the project involving ECFMU. To drag them into the Complaint's ill-conceived,

trigger the reason to believe threshold.... [T]here was no evidence, other than complainant's accusation, that coordination occurred."); MUR 6981 (Sheldon Adelson) First General Counsel's Report at 5-6 (recommending a finding of no reason to believe violations of the Act occurred when the "relevant factual information presented in the Complaint [was] limited to general statements regarding business relationships between [the subject of the Complaint] and foreign nationals or entities that, even if true, do not appear to give rise to a potential violation of the Act.")

¹⁹ MUR 6661 (Murray Energy Corp.) Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman at 19 (emphasis added).

²⁰ It also bears note that the aggregate amounts of the cited contributions all fell *below* the maximum contribution amount that a single individual could give a candidate committee in the 2013-14 election cycle. As some commissioners have noted, "[i]n [the Commission's] experience, conduit contributions schemes tend to involve the [contribution] limit." MUR 4850 (Deloitte & Touche, L.L.P.) Statement of Reasons of Chairman Wold and Commissioners Mason and Thomas at 2.

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unfounded set of charges simply because of certain permissible campaign contributions is even more irresponsible.

III. Conclusion

Respondents respectfully request that the Commission dismiss the Complaint herein. These claims are exactly the sort of speculation that the Commission has repeatedly and roundly rejected. As the Commission has made clear, “[a] reason-to-believe finding by the Commission must be based on *specific facts* from *reliable sources*.”²¹ There are no specific facts in the Complaint supporting the alleged violation of FECA, and Mr. Larrabee does not appear to be a reliable source. As a result, the Complaint should be dismissed.

Sincerely,

*/s/ Scott E. Thomas, Aaron R. Lancaster,
Jennifer Carrier*

Scott E. Thomas
Aaron R. Lancaster
Jennifer Carrier
Blank Rome LLP

/s/ David Schertler

David Schertler
Schertler & Onorato, LLP

²¹MUR 6002 (Freedom’s Watch, Inc.) Statement of Reasons Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at 6 (emphasis added).

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Exhibit 1

Declarations:

Ed Kutler

Gregory Lankler

Michael McSherry

Deirdre Stach

Vin Weber

100374074742001

BEFORE THE FEDERAL ELECTION COMMISSION

In Matter Under Review 7272

DECLARATION OF EDWARD KUTLER

1, Edward Kutler, under penalty of perjury, hereby declare the following to be true and accurate to the best of my knowledge and belief:

1. I was previously employed by Mercury as a government relations consultant and public affairs advisor.
2. I contribute regularly to federal candidates and committees. From 2013 through 2016, I made approximately 181 contributions totaling approximately \$158,650 to federal candidates and committees. The contributions that are the subject of this complaint total \$3,500.
3. I have never been reimbursed by Mercury, by a client, or by anyone for political contributions.
4. I am not aware of any Mercury employee being reimbursed for political contributions.

Edward Kutler

Edward Kutler

OCT 3, 2017

Date

BEFORE THE FEDERAL ELECTION COMMISSION

In Matter Under Review 7272

DECLARATION OF GREGORY LANKLER

1, Gregory Lankler, under penalty of perjury, hereby declare the following to be true and accurate to the best of my knowledge and belief:

1. I serve as a Managing Director at Mercury.
2. I did not provide any services for the European Centre for a Modern Ukraine. I did not work on that account in any capacity.
3. I contribute regularly to federal candidates and committees. From 2013 through 2016, I made approximately 60 contributions totaling approximately \$43,000 to federal candidates and committees. One of my contributions -- \$500 to Congressman Ed Royce in June 2013 -- is a subject of this complaint.
4. I have never been reimbursed by Mercury, by a client, or by anyone for political contributions.
5. I am not aware of any Mercury employee being reimbursed for political contributions.



Gregory Lankler

10/2/17

Date

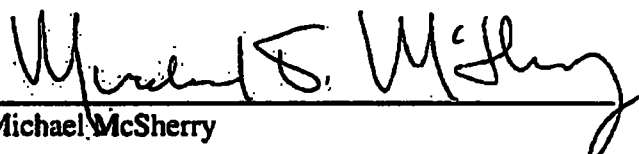
BEFORE THE FEDERAL ELECTION COMMISSION

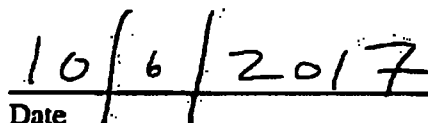
In Matter Under Review 7272

DECLARATION OF MICHAEL MCSHERRY

I, Michael McSherry, under penalty of perjury, hereby declare the following to be true and accurate to the best of my knowledge and belief:

1. I serve as a Managing Director at Mercury, and act as a government relations and political strategist.
2. I contribute regularly to federal candidates and committees. From 2013 through 2016, I made approximately 59 contributions totaling approximately \$34,250 to federal candidates and committees. Two of my contributions -- \$500 to Congressman Ed Royce in June 2013 and \$1000 to Senator Jim Risch in December 2013 -- are subjects of this complaint. I also contributed to Congressman Ed Royce in March 2015, approximately a year after Mercury's representation of ECFMU ceased.
3. I have never been reimbursed by Mercury, by a client, or by anyone for political contributions.
4. I am not aware of any Mercury employee being reimbursed for political contributions.


Michael McSherry


Date

BEFORE THE FEDERAL ELECTION COMMISSION

In Matter Under Review 7272

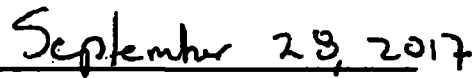
DECLARATION OF DEIRDRE STACH

I, Deirdre Stach, under penalty of perjury, hereby declare the following to be true and accurate to the best of my knowledge and belief:

1. I serve as a Senior Vice President at Mercury, and act as a federal government affairs consultant.
2. I did not provide any services for the European Centre for a Modern Ukraine. I did not work on that account in any capacity.
3. I contribute regularly to federal candidates and committees. From 2013 through 2016, I made approximately 12 contributions totaling approximately \$8,750 to federal candidates and committees. One of my contributions -- \$250 to Congressman Ed Royce in June 2013 -- is a subject of this complaint.
4. I have never been reimbursed by Mercury, by a client, or by anyone for political contributions.
5. I am not aware of any Mercury employee being reimbursed for political contributions.



Deirdre Stach



Date

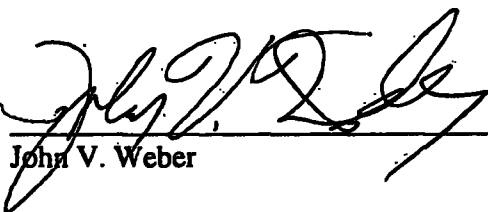
BEFORE THE FEDERAL ELECTION COMMISSION

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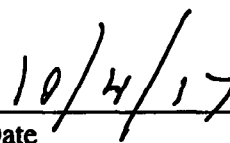
DECLARATION OF JOHN "VIN" WEBER

I, John V. Weber, under penalty of perjury, hereby declare the following to be true and accurate to the best of my knowledge and belief:

1. I serve as a Partner at Mercury, and act as a government relations strategist.
2. I contribute regularly to federal candidates and committees. From 2013 through 2016, I made approximately 72 contributions totaling approximately \$93,400 to federal candidates and committees. The contributions that are the subject of this complaint total \$4,500.
3. I have never been reimbursed by Mercury, by a client, or by anyone for political contributions.
4. I am not aware of any Mercury employee being reimbursed for political contributions.



John V. Weber



Date